

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLIFFORD B. KINKADE,

Defendant.

Case No. 6:17-cv-03073-MDH-1

ORDER

Before the Court is Defendant Clifford Benjamin Kinkade's motion for return of property. (Doc. 80). Defendant requests the return of his seized property from Greene County, or in the alternative, Defendant asks for all the meta data from the devices. For the following reasons, the Motion is **DENIED**.

The property in question is in the custody of the Greene County Sheriff's Office and any request for the return of the property must be directed to the state. *See United States v. Bacon*, 900 F.3d 1234, 1239 (10th Cir. 2018) (upholding district court's denial of the defendant's request for the return of property where the disputed property was seized by state officials pursuant to a state warrant and held as evidence for state charges. Even though the federal government later filed federal charges and used the property as evidence for the pending federal case, the property never physically changed hands and when the property was in the "constructive possession of the federal government," the state retained actual, physical custody over it); *United States v. Cobb*, 703 Fed. Appx. 879, 882 (11th Cir. 2017) (upholding district court's denial of the defendant's request for the return of property where the disputed property was seized by state officials and in state custody

stating “we cannot order the federal government to return something that it does not possess”); *United States v. Marshall*, 338 F.3d990, 995 (9th Cir. 2003). The Motion is **DENIED**.

IT IS SO ORDERED.

Dated: April 28, 2021

/s/ Douglas Harpool
DOUGLAS HARPOOL
United States District Judge